

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the
California Renewables Portfolio Standard
Program.

Rulemaking 04-04-026
(Filed April 22, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING DENYING AReM's MOTION FOR
STAY, RECONSIDERATION OF RULING CONCERNING MOTION FOR
ADOPTION OF INTERIM PROTECTIVE ORDER GOVERNING ACCESS TO
ELECTRIC SERVICE PROVIDER DATA SUBMITTALS, AND FOR
SHORTENED COMMENT PERIOD**

On January 19, 2006, the Administrative Law Judge (ALJ) issued an ALJ's Ruling Granting in Part AReM's Motion concerning Contents of Electric Service Provider Preliminary Renewable Portfolio Reports and Motion for Adoption of Protective Order (Reports Ruling). In the afternoon of January 20, 2006, the Alliance for Retail Energy Markets (AReM) submitted three related motions:

1. Emergency Motion for Stay of Requirement for Electric Service Providers to Submit Preliminary Renewable Portfolio Reports (Stay Motion);
2. Motion for Reconsideration of Ruling Concerning Motion for Adoption of Interim Protective Order Governing Access to Electric Service Provider Data Submittals (Reconsideration Motion);
3. Motion for Shortened Comment Period (Comment Motion).

By an electronic mail message to the service list on January 20, 2006, the ALJ extended the time for electric service providers (ESPs) to submit their

preliminary renewable portfolio reports (preliminary reports) from January 23, 2006 to January 24, 2006.

Stay Motion

In view of the disposition of the Reconsideration Motion, and the revised schedule set forth below, the Stay Motion should be denied.

Reconsideration Motion

In its Reconsideration Motion, AReM advances four arguments:

1. Because no decision in Rulemaking (R.)05-06-040, examining confidentiality issues more generally, has been issued, the information in ESPs' preliminary reports should be protected as a matter of Commission policy;
2. Because the protection of information is also being addressed in R.05-12-013, the policies adopted in that proceeding should be used in this one;
3. Because some parties in R.05-12-013 jointly proposed a protective order that is under consideration for adoption in that proceeding, that protective order should be used in this proceeding;
4. The interests of the parties and the public may be equally served by public release of aggregated ESP data.

All of these arguments were available at the time AReM filed its Motion for Adoption of Protective Order for Electric Service Provider Preliminary Renewable Portfolio Reports (Protective Order Motion) on December 6, 2005. Even if AReM were under a misapprehension about the nature of the showing required to support its Protective Order Motion, the responses of Aglet Consumer Alliance, Southern California Edison Company, and The Utility Reform Network to the Protective Order Motion, filed on December 21, 2005, would have alerted AReM to possible deficiencies in its presentation of the

Protective Order Motion. AReM did not seek permission to file a reply to these responses, as allowed by Rule 45(g) of the Commission's Rules of Practice and Procedure. AReM here merely seeks the proverbial "second bite at the apple," which is sufficient basis to deny the Reconsideration Motion.

Beyond this procedural basis, the substance of AReM's newly-presented arguments does not justify reconsideration. Initially, as noted in the Reports Ruling, AReM is a trade association. It is not obligated to file preliminary renewable portfolio reports, nor does it have any contracts with suppliers or customers for the purchase or delivery of electricity. Only the individual ESPs, with obligations under the RPS statute and relationships with suppliers and customers, are in a position to judge whether their interests are adequately protected by the Reports Ruling. Only the individual ESPs, therefore, are in a position to assert those interests in this proceeding, if they deem it necessary or appropriate.

AReM's arguments for deferring to confidentiality determinations in other proceedings are not persuasive.¹ The work of crafting protections for information asserted to be confidential cannot be put on hold until some later point in the life of R.05-06-040. As AReM notes, confidentiality issues related to submissions by the large utilities have been ruled on in this proceeding, because it was necessary to do so, in the absence of a decision in R.05-06-040. Indeed, the ALJ's request for comment on AReM's proposed protective order in R.05-12-013, on which AReM relies, demonstrates that determinations about confidentiality are being made continually while R.05-06-040 is pending.

¹ AReM's uninformed comments about coordination among various Commission proceedings will not be addressed here.

AReM's reliance on the policies enunciated for the examination of resource adequacy is similarly unpersuasive. AReM asserts that the same types of information required in the preliminary reports to be filed in this proceeding has been protected in R.04-04-003, and will be protected in R.05-12-013, but it does not show which particular information required in the preliminary reports is, or may be, covered in the resource adequacy proceeding. The information required in the preliminary reports is clearly identified and easy to characterize. AReM's failure to connect these requirements to the resource adequacy submissions of ESPs, beyond referring to "load forecasts," does not provide sufficient basis to support its claim that the confidentiality protection of ESPs' preliminary renewable portfolio reports has been resolved in the resource adequacy proceeding.

AReM's argument for the release only of aggregated ESP information, based on its proposed protective order in R.05-12-013, suffers from the same lack of particularity as its other claims. It may make sense, as AReM asserts, to treat similar information similarly in the two proceedings, or it may not. It may make sense only to treat identical information identically. AReM has not provided any basis to conclude that all of the particular information required in the preliminary reports should be subject to the same aggregation process it is proposing in R.05-12-013.²

² The ALJ's request for comments on the proposed revised protective order in that proceeding may result in changes to what AReM has presented. Once an order has been adopted in that proceeding, it could, under appropriate circumstances, be considered in this proceeding. But the fundamental issue of whether particular information *should* be protected must be resolved initially in this proceeding. In this

Footnote continued on next page

The public interest in attainment of the RPS program's goals and in the progress of load serving entities in meeting those goals is strong. The legitimate interests of all load serving entities in confidentiality is also an important consideration. In order to strike an appropriate balance, careful and detailed consideration is required. AReM has not provided a basis to alter the balance struck in the Reports Ruling. Its Reconsideration Motion should therefore be denied.

**Revised Schedule for Submission
of Preliminary Reports**

To avoid prejudice to ESPs that may have relied on AReM's presentation in its various motions on the issue of confidentiality, the schedule for ESPs to submit preliminary reports and the terms of the submission should be revised. The ESPs' preliminary reports should be filed and served not later than January 26, 2006. Any ESP may elect to file under seal any portions of the preliminary reports that they are prepared to argue should be protected from release, so long as not later than February 1, 2006, the ESP also files a motion for leave to file under seal and for protective order. Any ESP choosing to file under seal must also file and serve redacted copies of the preliminary report not later than January 26, 2006.

Any ESP's motion for leave to file under seal and for protective order must show with particularity why the motion should be granted. This showing must include at least:

regard, the Legislature explicitly protected from disclosure the terms of an ESP's contracts, but did not place any other restrictions on disclosure in the RPS statute. (See Pub. Util. Code § 399.12 (b)(3)(B).)

1. An explanation of the need for protection of *each item of information* sought to be protected, with reference to the particular situation of the ESP seeking protection (without revealing the information); and
2. An argument, including citation to relevant authorities, setting forth the legal basis of the claim for protection of the information.

Comment Motion

In view of the disposition of the Reconsideration Motion, the Comment Motion is moot and it is unnecessary to rule on it.

IT IS RULED that:

1. AReM's Emergency Motion for Stay of Requirement for Electric Service Providers to Submit Preliminary Renewable Portfolio Reports, submitted January 20, 2006, is denied.

2. AReM's Motion for Reconsideration of Ruling Concerning Motion for Adoption of Interim Protective Order Governing Access to Electric Service Provider Data Submittals, submitted January 20, 2006, is denied.

3. AReM's Motion for Shortened Comment Period, submitted January 20, 2006, is moot and need not be decided.

4. The schedule for ESPs to file and serve preliminary renewable portfolio reports is revised as follows:

January 26, 2006	ESPs filed and serve preliminary renewable portfolio reports, including redacted versions of any filings under seal
February 1, 2006	ESPs file and serve motions to file under seal and for protective order, if relevant
February 10, 2006	Responses to motions to file under seal and for protective order, if any, filed and served
February 17, 2006	Replies to responses, if any, filed and served.

5. The protective order adopted in the Administrative Law Judge's Ruling on Motions for Leave to File under Seal and for Protective Orders (June 9, 2005) shall apply to the ESPs' preliminary renewable portfolio reports.

6. Commission staff shall treat the confidential portions and any portions filed provisionally under seal of the ESPs' preliminary renewable portfolio reports as though they had been filed subject to the protections of Pub. Util. Code § 583.

Dated January 23, 2006, at San Francisco, California.

/s/ Anne E. Simon
Anne E. Simon
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying AReM's Motions for Stay, Reconsideration of Ruling Concerning Motion for Adoption of Interim Protective Order Governing Access to Electric Service Provider Data Submittals, and for Shortened Comment Period on all parties of record in this proceeding or their attorneys of record.

Dated January 23, 2006, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

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R.04-04-026 AES/avs

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